CROPS—REAL OR PERSONAL PROPERTY—STATE OF MATURITY.—The plaintiff commenced an action of replevin for a crop of corn while it was still standing. *Held,* the action would lie whether the corn was mature or not. *Stephens* v. *Steckdaub* (Mo. 1920) 217 S. W. 871.

Since only personal property can be replevied, it is necessary to determine whether growing corn is personalty or realty. See *Richbourg* v. *Rose* (1907) 53 Fla. 173, 189, 44 So. 69. The part played by maturity in determining this question has been the source of some disagreement among the courts, which have taken three views: (1) Growing crops, using crops in the restricted sense of *fructus industriales,* become personalty when they have ceased to draw nutriment from the soil. *Meyers* v. *Steele* (1916) 98 Kan. 577, 158 Pac. 660; see *Ellis* v. *Bingham* (Tex. 1912) 150 S. W. 602, 603. (2) They are realty until severance, regardless of the state of maturity. *Tripp* v. *Hasceig* (1870) 20 Mich. 254; *In re Estate of Andersen* (1908) 83 Neb. 8, 118 N. W. 1108. (3) They are personalty, regardless of the state of maturity. *Garth* v. *Caldwell* (1880) 72 Mo. 622. The first view raises a difficult question of fact, for it is not easy to determine the exact point at which crops cease to derive nutriment from the soil. See *Firebaugh* v. *Divan* (1903) 111 Ill. App. 137, 139. On the other hand, this view seems to be theoretically correct, for mature crops no longer depend upon the soil for their existence and development. See *Hecht* v. *Dettman* (1881) 56 Iowa 679, 680, 7 N. W. 495 (comparing the soil after maturity of the crop to a warehouse). The last two views furnish good working rules, but the third view, that taken by the instant case, which wipes out the distinction between emblements and ordinary chattels, is hardly logical.

DAMAGES—QUASI-ESTOPPEL—FAILURE TO PROSECUTE APPEAL.—The plaintiff was insured in the defendant company to the extent of $5,000 against liability for injuries to third persons occurring in the operation of his automobile. A verdict of $13,000 was recovered against the plaintiff. The insurer which had conducted the defense elected to appeal, and its attorneys expressed their confidence that they would secure a reversal. But they negligently failed to appeal and the plaintiff was compelled to satisfy the judgement, the insurance company contributing $5,000. A suit in the nature of an action on the case was brought against the defendant for failure to fulfill its undertaking to prosecute the appeal. At the trial the insurer offered in evidence the minutes of the previous action to prove that there was no reversible error and consequently the failure to appeal caused no damage. *Held,* the evidence should be excluded because the defendant was estopped to show that the damage to the plaintiff was less than the amount the assured was forced to pay without reimbursement. *McAleenan* v. *Massachusetts Bonding Co.* (App. Div. 1st Dept. 1920) 180 N. Y. Supp. 287.

When one is lulled into security by the misrepresentation of another so that he abstains from the effort to retrieve a loss which he otherwise would have made, the misrepresenter will not be permitted to deny that the damage is the full amount of the loss. *Fall River Nat. Bank* v. *Buffinton* (1867) 97 Mass. 498; *Knights* v. *Wiffen* (1870) L. R. 5 Q. B. 660; *Globe Navigation Co.* v. *Maryland Casualty Co.* (1905) 39 Wash. 299, 81 Pac. 826. In some cases the result is justified by a technical estoppel, *Fall River Nat. Bank* v. *Buffinton, supra; cf. Knights* v. *Wiffen, supra,* and in others by a quasi-estoppel that

amounts to little more than a law-imposed waiver of the right to contest the damage. *Globe Navigation Co.* v. *Maryland Casualty Co., supra; cf. Gordon Inc.* v. *Mass. Bonding & Ins. Co.* (1919) 186 App. Div. 630, 174 N. Y. Supp. 844. The unfairness of imposing upon the injured party the well nigh impossible task of proving that had he not abandoned his right relying on the misrepresentation, he would have recouped his loss, is the explanation of this departure from the ordinary rule that the plaintiff must prove his actual loss. Where an attorney is sued for negligence in failing to conduct properly his client's case the latter is called upon to prove that he had a good cause of action though it involved a retrial of a previously decided action. *Lanprecht* v. *Bien* (1908) 125 App. Div. 811, 110 N. Y. Supp. 128; *Spangler* v. *Sellers* (C. C. 1881) 5 Fed. 882, 895. There would seem then to be no reason in the instant case to deny the defendant the right to prove to the court that there was no reversible error in the original trial. *G and M. L. M. Co.* v. *E. L. A. Corporation* (1902) 117 Iowa 180, 90 N. W. 616. The decision would be subject to review by the same courts as would have heard the barred appeal.

DIVORCE—INFANTS—APPOINTMENT OF GUARDIAN AD LITEM.—The plaintiff, an infant, sues her infant husband for divorce and alimony, both being within the statutory age required for marriage. The defendant's motion to suspend the hearing until a guardian *ad litem* be appointed in accordance with § 5565 of the Georgia Code (1910) was overruled. On appeal, *held,* two judges dissenting, the appointment of a guardian was not necessary. *Bentley* v. *Bentley* (Ga., 1920) 102 S. E. 21.

On the theory that if an infant is incapable of making a contract he cannot sue on it in his own behalf—a theory which is applicable to all civil actions whether founded on contract or not—an infant must sue by *prochein ami* and defend by guardian. Schouler, Domestic Relations (5th ed.) § 449. Where, however, a statute, or, it is submitted the common law, permits an infant to enter into the marriage contract, the infant ought to be permitted, like any adult, to sue to dissolve the contract. *Besore* v. *Besore* (1873) 49 Ga. 379; but see *Wood* v. *Wood* (N. Y. 1830) 2 Paige 108, 110. And if an infant is permitted to be plaintiff in a divorce suit there seems to be no good reason why he cannot be a defendant. Section 5565 of the Code (§ 4987 Civ. Code of 1895) relied on by the defendant was interpreted to prescribe merely the mode of service on a guardian and not when the appointment of one is necessary. See *Furr* v. *Burns* (1906) 124 Ga. 742, 53 S. E. 201. The theory of the dissent was that logical or not there is a distinction between the rights of an infant as plaintiff and as defendant, since in the former capacity he is liable at most for costs and in the latter his estate may be substantially diminished. See *Coalson* v. *Tooke* (1855) 18 Ga. 742, 744; *Mitchell* v. *Spaulding* (1903) 206 Pa. St. 220, 224. But none of these cases involved divorce proceedings to which ordinary rules of contract apparently do not apply and in which infants are treated as adults. See *Besore* v. *Besore, supra,* 379; *Hinkle* v. *Lovelace* (1907) 204 Mo. 208, 223, 102 S. W. 1015. In view of the fact that it would be illogical to allow an infant to appear as plaintiff and not as defendant and also that it might be bad policy to permit a guardian to control the defence in the highly personal divorce proceedings, the majority opinion is commendable as a proper extension of a sensible rule. *Cf. Hinkle* v. *Lovelace, supra,* 222.